

Privilege Log and Aviation Video

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Tue 8/31/2021 12:26 PM

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Dear Elissa,

The privilege log dated August 20, 2021, has only documents that are in the custody of DOI. It lists no documents from the NYPD, the Mayor's Office, the Corporation Counsel, or any other City agency. Defendants have previously said that the NYPD was withholding documents, including, for example, the "draft After-Action report" that Dara e-mailed about on August 19. Also, the log produced lacks some of the information required by Local Civil Rule 26.2(a)(2)(A) (iv) – the "author of the document, the addressees of the document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other." When will a complete Privilege Log of all documents being withheld be produced to plaintiffs?

With respect to the documents that are listed on the 8/20/2021 Excel privilege log, plaintiffs request an immediate meet and confer regarding the withholding of DOI audio and video interviews of Chief Wedin, Chief Lehr, and Chief Madry. You have asserted the Deliberative Process and Law Enforcement privileges as to each. Those privileges cannot apply to interviews conducted pursuant to an order from the Mayor for DOI to conduct an investigation and issue a public report. The Deliberative Process privilege and Law Enforcement privilege cannot apply to shield a verbatim recording of an interview that the interviewee knew was part of a mandated investigation intended to result in a public report.

Plaintiffs also wish to meet and confer regarding the withholding of the items of "Data" (at lines 54 & 55 of the August 20 Excel spreadsheet) withheld as AWP, and as to line 55, also DP. Data is clearly not attorney work product, nor does it qualify as a deliberative action.

With regard to the Aviation video, during the August 18, 2021, meet and confer, Dara agreed to produce it to plaintiffs by August 20, or to specify what Aviation video had been preserved and when it will be produced. Defendants have provided neither. When will plaintiffs receive the Aviation footage and an itemization of what was preserved?

Yours, etc.

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